2. Section 69.3 is amended by adding new paragraph (e)(11) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(11) Any changes in Association common line tariff participation and Long Term and Transitional Support resulting from the merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following consummation of the merger or acquisition transaction, in accordance with the provisions of § 69.3(e)(9).

3. Section 69.3 is amended by adding new paragraph (g) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(g) The following rules apply to telephone company participation in the Association common line pool for telephone companies involved in a merger or acquisition.

(1) Notwithstanding the requirements of § 69.3(e)(9), any Association common line tariff participant that is party to a merger or acquisition may continue to participate in the Association common line tariff.

(2) Notwithstanding the requirements of § 69.3(e)(9), any Association common line tariff participant that is party to a merger or acquisition may include other telephone properties involved in the transaction in the Association common line tariff, provided that the net addition of common lines to the Association common line tariff resulting from the transaction in not greater than 50,000, and provided further that, if any common lines involved in a merger or acquisition are returned to the Association common line tariff, all of the common lines involved in the merger or acquisition must be returned to the Association common line tariff.

(3) Telephone companies involved in mergers or acquisitions that wish to have more than 50,000 common lines reenter the Association common line pool must request a waiver of § 69.3(e)(9). If the telephone company has met all other legal obligations, the waiver request will be deemed granted on the sixty-first (61st) day from the date of public notice inviting comment on the requested waiver unless:

(i) The merger or acquisition involves one or more partial study areas;

(ii) The waiver includes a request for confidentiality of some or all of the materials supporting the request;

(iii) The waiver includes a request to return only a portion of the telephone properties involved in the transaction to the Association common line tariff;

(iv) The Commission rejects the waiver request prior to the expiration of the sixty-day period;

(v) The Commission requests additional time or information to process the waiver application prior to the expiration of the sixty-day period; or

(vi) A party, in a timely manner, opposes a waiver request or seeks conditional approval of the waiver in response to our public notice of the waiver request.

4. Section 69.612 is amended by adding new paragraph (c) to read as follows:

§ 69.612 Long term and transitional support.

* * * * *

(c) Long Term and Transitional Support shall be modified to take into account mergers and acquisitions on a prospective basis. The Association shall adjust the 1988 base year data of the surviving entity of entities or any merger or acquisition to reflect the changes effected by the merger or acquisition before calculating the Long Term and Transitional Support amounts pursuant to § 69.612 (a) and (b). For this purpose, the Association shall assume that the transaction occurred prior to 1988.

[FR Doc. 89-22737 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Emergency Broadcast System

AGENCY: Federal Communications Commission.

SUMMARY: This document corrects a final rule published in the **Federal Register** at 53 FR 15398, April 29, 1988, concerning the emergency broadcast system.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Lucia, (202) 632-3906, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-9391 published in the April 29, 1988, **Federal Register** on page 15398, the following correction is made in § 73.937 by removing the word "Level" from the heading of the section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-22738 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Radio Broadcasting Services; Unlimited-time Operation by Existing AM Daytime-only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime-only Stations; and Minimum Power of Class III Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning Radio Broadcasting Services published at 53 FR 1032, January 15, 1988.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Stephens, (202)-254-3394.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-823, published in the January 15, 1988 **Federal Register** on page 1032 (53 FR 1032), in column 1, amendatory instruction number 14 is corrected to read "§ 73.3571 is amended by revising paragraph (d)(5) to read as follows:".

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-22765 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 88-139; DA 89-1051]

Reorganization and Deregulation of the Rules Governing the Amateur Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rules; correction.

SUMMARY: This errata corrects errors and omissions in the final rules (54 FR 25857, June 20, 1989) adopted by the Commission on May 31, 1989. The errata is necessary so that amateur service stations and operators will have access to complete and accurate rules. By this action, the amateur community should be better able to understand and comply with the rules.

EFFECTIVE DATE: September 27, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Aliens, Amateur radio, Digital communications, Emissions, Frequencies, Radio.

Released: September 7, 1989.

In the matter of reorganization and deregulation of part 97 of the rules governing the amateur radio services.

The final rules published on June 30, 1989, at page 25857, in the above-entitled matter, are corrected as follows:

1. On page 25857, in the third column, in the table of contents for part 97—Amateur Radio Service, § 97–115 "Third-party traffic." is corrected to read "97.115 Third party communications."

2. On page 25858, in the first column, in the table of contents for part 97—Amateur Radio Service, § 97.309 "RTTY and data emission digital codes." is corrected to read "RTTY and data emission codes."

§ 97.5 [Corrected]

3. On page 25860, in the first column, in § 97.5(d)(2), the word "form" is corrected to read "Form."

§ 97.5 [Corrected]

4. Also on page 25860, in the first column, the final word in § 97.5(d)(5) is corrected to read "licensee."

§ 97.15 [Corrected]

5. Also on page 25860, in the third column, in § 97.15(b)(2) remove the word "longer" and substitute therefor the word "shorter."

6. On page 25862, in the second column, § 97.109 is correctly revised to read as follows:

§ 97.109 Station control.

(a) Each amateur station must have at least one control point.

(b) When a station is being locally controlled, the control operator must be at the control point. Any station may be locally controlled.

(c) When a station is being remotely controlled, the control operator must be at the control point. Any station may be remotely controlled.

(d) When a station is being automatically controlled, the control operator need not be at the control point. Only stations transmitting RTTY or data emissions on the 6 m or shorter wavelength bands, and stations specifically designated elsewhere in this part may be automatically controlled. Automatic control must cease upon notification by an EIC that the station is transmitting improperly or causing harmful interference to other stations. Automatic control must not be resumed without prior approval of the EIC.

(e) No station may be automatically controlled while transmitting third party communications, except a station retransmitting digital packet radio communications on the 6 m and shorter wavelength bands. Such stations must be using the American Radio Relay League, Inc. *AX.25 Amateur Packet—Radio Link—Layer Protocol, Version 2.0*, October 1984 (or compatible) which is available from American Radio Relay League, Inc., 225 Main Street, Newington, Connecticut 06111. The retransmitted messages must originate at a station that is being locally or remotely controlled.

7. On page 25863, in the third column, in § 97.119, correct paragraph (b)(3) and paragraph (c) to read as follows. Also, on page 25864, remove paragraph (g) of this section.

§ 97.119 Station identification.

* * * * *

(b) * * *

(2) * * *

(3) By a RTTY emission using a specified digital code when all or part of the communications are transmitted by a RTTY or data emission;

* * * * *

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark. If the indicator is self-assigned, it must be included after the call sign and must not conflict with any other indicator specified by the FCC Rules or by any prefix assigned to another country.

* * * * *

8. On page 25865, in the first column, § 97.207(c) (1) and (2) is corrected to read as follows:

§ 97.207 Space station.

(c) * * *

(1) The 17 m, 15 m, 12 m, and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz, and 2400–2450 MHz, 3.40–3.41 GHz, 5.83–5.85 GHz, 10.45–10.50 GHz, and 24.00–24.05 GHz segments.

* * * * *

9. Also on page 25865, in the second column, § 97.209(b)(1) is corrected to read:

§ 97.209 Earth station.

* * * * *

(b) * * *

(1) The 17 m, 15 m, 12 m, and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

* * * * *

10. Also on the same page, and in the same column, § 97.211(c)(1) is corrected to read:

§ 97.211 Telecommand station.

* * * * *

(c) * * *

(1) The 17 m, 15 m, 12 m and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

* * * * *

11. On pages 25865, 25866, and 25867, in § 97.301, paragraph (a) is corrected by changing the first entry in the UHF wavelength band table; paragraph (c) is corrected by changing the ninth entry in the HF wavelength band table; and paragraph (d) is corrected by changing the second, third, and ninth entries in the HF wavelength band table as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303, Paragraph:
* * * * *	* * * * *	* * * * *	* * * * *	*
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	420–450	(a), (b), (f).
* * * * *	* * * * *	* * * * *	* * * * *	*

(c) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303, Paragraph:
* * *	* * *	* * *	* * *	*
HF	MHz	MHz	MHz	
* * *	* * *	* * *	* * *	*
Do	21.225–21.450	21.225–21.450	21.225–21.450	

(d) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303, Paragraph:
* * *	* * *	* * *	* * *	*
HF	MHz	MHz	MHz	
* * *	* * *	* * *	* * *	*
75 m		3.85–4.00	3.85–3.90	(a).
40 m	7.025–7.100	7.025–7.150	7.025–7.100	(a).
* * *	* * *	* * *	* * *	*
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
* * *	* * *	* * *	* * *	*

§ 97.303 [Corrected]

12. On page 25867, in the second column, in § 97.303, paragraph (b), correct "24.05–24.24" to read "24.05–24.25."

§ 97.303 [Corrected]

13. On page 25868, in the first column, in § 97.303, paragraph (f)(4), correct "449.5–450 MHz" to read "449.75–450.25 MHz."

§ 97.303 [Corrected]

14. Also on page 25868, in the second column, in § 97.303, paragraph (k), add "GHz" after "145.45–145.75."

§ 97.303 [Corrected]

15. Also on page 25868, in the third column, in § 97.303, paragraph (n)(2), add "GHz" after "10.00–10.45."

16. On page 25869, in § 97.305(c), the entries in the MF, HF, and VHF wavelength band tables are corrected to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards, see § 97.307(f), paragraph
MF:			
160 m	Entire band	RTTY, data	(3).
160 m	Entire band	Phone, image	(1), (2).
HF:			
80 m	Entire band	RTTY, data	(3), (9).
75 m	Entire band	Phone, image	(1), (2).
40 m	7.000–7.100 MHz	RTTY, data	(3), (9).
40 m	7.075–7.100 MHz	Phone, image	(1), (2), (9), (11).
40 m	7.100–7.150 MHz	RTTY, data	(3), (9).
40 m	7.150–7.300 MHz	Phone, image	(1), (2).
30 m	Entire band	RTTY, data	(3).
20 m	14.00–14.15 MHz	RTTY, data	(3).
20 m	14.15–14.35 MHz	Phone, image	(1), (2).
17 m	18.068–18.110 MHz	RTTY, data	(3).
17 m	18.110–18.168 MHz	Phone, image	(1), (2).
15 m	21.0–21.2 MHz	RTTY, data	(3), (9).
15 m	21.20–21.45 MHz	Phone, image	(1), (2).
12 m	24.89–24.93 MHz	RTTY, data	(3).
12 m	24.93–24.99 MHz	Phone, image	(1), (2).
10 m	28.0–28.3 MHz	RTTY, data	(4).
10 m	28.3–28.5 MHz	Phone, image	(1), (2), (10).
10 m	28.5–29.0 MHz	Phone, image	(1), (2).
10 m	29.0–29.7 MHz	Phone, image	(2).

—Continued

Wavelength band	Frequencies	Emission types authorized	Standards, see § 97.307(f), paragraph
VHF:			
6 m	50.1–51.0 MHz	RTTY, data	(5).
6 m	50.1–51.0 MHz	MCW, phone, image	(2).
6 m	51.0–54.0 MHz	RTTY, data, test	(5), (8).
6 m	51.0–54.0 MHz	MCW, phone, image	(2).
2 m	144.1–148.0 MHz	RTTY, data, test	(5), (8).
2 m	144.1–148.0 MHz	MCW, phone, image	(2).
1.25 m	Entire band	RTTY, data, test	(6), (8).
1.25 m	Entire band	MCW, phone, image	(2).

* * * * *

17. On page 25870, in the first column, in § 97.307, paragraphs (f) (5) and (6) are corrected to read as follows:

§ 97.307 Emission standards.

* * * * *

(f) * * *

(5) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 19.6 kilobauds. A RTTY, data or multiplexed emission using an unspecified digital code under the limitations listed in § 97.309(b) of this Part also may be transmitted. The authorized bandwidth is 20 kHz.

(6) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 56 kilobauds. A RTTY, data or multiplexed emission using an unspecified digital code under the limitations listed in § 97.309(b) of this Part also may be transmitted. The authorized bandwidth is 100 kHz.

* * * * *

18. Also on page 25870, in the second column, the title of § 97.309 is correctly revised to read as set forth below and paragraphs (a) (1), (2), and (3) are corrected to read as follows:

§ 97.309 RTTY and data emission codes.

(a) * * *

(1) The 5-unit, start-stop, International Telegraphs Alphabet No. 2 code, defined in International Telegraph and Telephone Consultative Committee Recommendation F.1, Division C.

(2) The 7-unit code, specified in International Radio Consultative Committee Recommendation CCIR 476–2 (1978), 476–3 (1982), 476–4 (1986) or 625 (1986).

(3) The 7–unit code, defined in American National Standards Institute X3.4–1977 or International Alphabet No. 5, defined in International Telegraph and Telephone Consultative Committee Recommendation T.50 or in International Organization for Standardization, International Standard ISO 646 (1983), and extensions as provided for in CCITT Recommendation T.61 (Malaga-Torremolinos, 1984).

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–22766 Filed 9–26–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Parts 5145 and 5152

Federal Acquisition Regulation Supplement; Government Furnished Property

AGENCY: Department of the Army (DA), DOD.

ACTION: Final Rule.

SUMMARY: The Defense Acquisition Regulatory Council approved for a two-year test period, the final rule which revises the proposed rule published at 54 FR 15471 dated April 18, 1989. The proposed rule was a Department of the Army deviation to Defense Acquisition Regulation Supplement (DFARS) Subpart 245.3 and section 252.245. The deviation permits the Army to provide existing Government property under installation support services contracts without retaining the responsibility for replacement. There is one change which is in placement of coverage.

EFFECTIVE DATE: September 27, 1989.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule solicited comments from interested parties. Comments were received from three sources. The following summarizes significant comments, suggestions and actions taken.

Time Limit

Concern was expressed that two-year test means two years opportunity to initiate contracts utilizing this mode of equipment provisioning. The deviation will authorize use of the procedures in solicitations/contracts issued during the test period. Procedures will be applicable to the entire contract period, including option periods.

Submission of Proposed Maintenance Plan

It was suggested that the proposed maintenance plan be provided with contractor proposals, and the successful contractor's plan updated within 30 days after contract start versus receiving the proposed maintenance plan 45 days after contract start. Agree, however, the proposed clause is referring to FAR 45.402, which requires the contractor's maintenance system to be approved in writing by the property administrator. A contractor cannot develop a complete maintenance plan until after contract award. If the contracting activity desires to have an outline of a proposed maintenance plan for use with evaluation, this could/should be so stated in the Schedule.

Inconsistent With General Contracting Principles

Normally "commingling" of government and contractor materials is not allowed. If exercised, it will be necessary for the government's materials to be properly marked and at Government expense. Nonconcur. DFARS 245.505–3 allows commingling of materials so long as the contractor has adequate controls to ensure that the requirements of 242.7206 are met. FAR 45.506 states that the "contractor shall identify, mark, and record all Government property * * *" Therefore, the deviation does not require any additional effort.

Current practice is that contractors may invoice items costing under $1000 as direct line item costs. When the contractor is reimbursed for such direct

line item costs, the government takes title. Agree, providing the contract states that the government will reimburse the contractor as a direct line item cost, the government retains title (FAR 52.245–2(c)(4) and 52.245–5(c)(2)). However, the government property clauses do not contain a dollar threshold regarding the government's responsibility for replacement. The practice referenced in the comments is derived from DODI 4100.33, Commercial Activities Program Procedures. This procedure is not incorporated in FAR contracting policy. Material, as defined in FAR 45.302, can be provided at the beginning of the contract, with a statement that the contractor will be responsible for replacement. Under the proposed deviation procedures, the government will not retain title of any items for which the contractor is responsible for replacement, regardless of cost.

Concern was expressed that no mention was made in the procedures regarding award or incentive fees to be applied to contractor replacements or provisioning. Unless otherwise waived, award and incentive fees are considered applicable to costs for contractor replacement of government property. This is not applicable to the procedures. Basic award and target incentive fees are negotiated and determined prior to award of the contract. This fee is based on the total estimated contract cost. The fee does not change when the contractor procures a replacement item. No change is necessary because acquisition of replacement items will be an allowable contract cost. The basic award fee and target incentive fee does not change.

Concern was expressed that the government would pay more than necessary for replacement equipment if the contractor requires more for the item than indicated in the cost proposal. No change is necessary as the contracting officer has the authority to challenge the contractor's cost under FAR 31.301–3.

It was suggested that there should be greater detailed data on differentiation between different types of equipment and material being provided which are expected to be replaced by the contractor. No change is necessary as the proposed 5145.301 defines "Other Property and Special Use Property." FAR 45.301 defines "Material." It is up to the command to determine which items should be considered under "other property" or "special use property" and/or what items of material the government should be responsible for replacing.

Stockage Levels and Reorder Points

It was suggested that volume discounts be encouraged as long as excessive volumes would not accrue and if contractors do not utilize government supply systems, what stockage levels and reorder points would be allowed or required for replacement operations. This is not applicable as a responsible contractor will establish stockage points, etc. If the contracting activity desires to know the contractor's procurement mechanisms for replacement operations for evaluation purposes, they should request that information as a part of the proposal. A request for the contractor's proposed plans for replacement operations for evaluation of offers is an in-house decision.

Mission Capability

Concern was expressed that procedure affords incumbent contractor an "edge" over other competing contractors and the Government at resolicitation time. The government could not compete again without repurchasing many items of equipment which is a problem in support of readiness training, testing and actual mobilization. No change is required as equipment required for readiness training, testing and actual mobilization should be determined to be "Special Use Property" for which the government will retain title.

Concern was expressed that if the contractor defaults or the Government elects to not exercise an option the installation could not support required missions. The government should have the right to purchase contractor equipment. No change is necessary as FAR 10.010 provides procedures for acquisition of used or reconditioned government property, which includes equipment.

Commercial Activities In-House Costing

Concern was expressed that there were no specific procedures to explain in-housing costing needs for this mode of operation. No change is necessary as guidance regarding preparation of the government cost estimate is provided by U.S. Army Organization of Efficiency Review Activity.

Clause Subject Matter

The title of 5145.302–6, Required Government Property Clauses for Facilities Contracts, is incorrect. The subject matter does not involve facilities contracts. Agree. The referenced paragraph has been revised to read 5145.302–3(S–91) Required Government Property Clauses for Other than Facilities Contracts.

B. Regulatory Flexibility Act

No comments were received pursuant to paragraph B of the proposed rule which appeared at 54 FR 15471, April 18, 1989.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 5145 and 5152

Government procurement, Government property.

Mary M. Pearson,

Army AFARS Liaison with the Federal Register.

Therefore, 48 CFR Chapter 51 is amended to read as follows:

1. Part 5145 is added to read as follows:

PART 5145—GOVERNMENT PROPERTY

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

5145.301 Definitions.

"Other Government Property" means all property, other than Special Use Property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

"Special Use Property" means property that is (a) "agency peculiar property", (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

5145.302–3 Other contracts.

(S–90)(1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's responsibility to continue performance in accordance with the terms of the contract.

(2)(i) New facilities shall not be purchased in order to provide them to

contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file. (ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause. For example, FAR 52.245–2 for fixed-price contracts or FAR 52.245–5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245–11, Facilities Use Clause.

(S–91) Required Government property clauses for other than facilities contracts.

(1) In addition to the clauses at FAR 52.245–2 and 52–245–19, the Contracting Officer shall insert the clause at 5152.245–9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(2) The Contracting Officer shall insert the clause at 5152.245–9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

5145.303 Providing material.

(S–90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303–1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245–2 for fixed-price and FAR 52.245–5 for cost-reimbursement type contracts.

2. Part 5152 is added to read as follows:

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

5152.245–9000 Government Property for Installation Support Services (Fixed-Price Contracts).

As prescribed in 5145.302–3(91), insert the following:

Government Property for Installation Support Services (Fixed-Price Contracts) (OCT) (1989) (DEV)

The Government property listed at Technical Exhibit ____ is provided "as is" to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245–2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245–19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit ____ will be governed by FAR 52.245–2, Government Property (Fixed-Price Contracts), and FAR 52.245–19, Government Property Furnished "as is".

(End of clause)

5152.245–9001 Government Property for Installation Support Services (Cost-Reimbursement Contracts).

As prescribed in 5145.302–3(S–91), insert the following clause:

Government Property for Installation Support Services (Cost-Reimbursement Contracts) (Oct 1989) (DEV)

(a) *Government-furnished property.* The Government property listed at Technical Exhibit ____ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property.* (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without

substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR Subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (g) (1) and (5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willfull misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the

Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR-7, Notice No. 1]

RIN 2130-AA48

Procedures for Protecting Camp Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its railroad operating practices regulations to require that certain protective procedures be employed when railroad employees occupy camp cars (on-track vehicles where rest is provided). The procedures are intended to prevent injuries that can occur when such vehicles are moved without proper precautions to protect the occupants.

EFFECTIVE DATE: These amendments are effective on January 1, 1990.

FOR FURTHER INFORMATION CONTACT: J.A. McNally, Director of Safety Enforcement, Office of Safety, FRA, 400 Seventh St., SW., Washington DC 20590 (telephone (202) 366-9252) or Mary-Jo Cooney Spottswood, Office of Chief Counsel, FRA, 400 Seventh St., SW., Washington, DC 20590 (telephone (202) 366-0628)

SUPPLEMENTARY INFORMATION: On February 17, 1989, FRA published a notice of proposed rulemaking (NPRM) under Docket RSOR-7, Notice No. 1 (54 FR 7219). FRA proposed to amend its operating practices regulations to require that certain procedures be employed when railroad employees occupy camp cars. These actions are taken in response to a statutory mandate, Section 19(c) of the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100-342).

In response to the NPRM, FRA received comments addressing various portions of the proposed rule from the Brotherhood of Maintenance-of-Way Employes (BMWE) and the Association of American Railroads (AAR), and Amtrak. The BMWE and the AAR submitted a joint proposal that has been helpful in the formulation of this rule. Both these parties also filed separate comments. Interested parties took little exception to the proposed rule. The issue which prompted the most discussion concerned the imposition of a speed limit on trains passing occupied camp cars and a twenty-five foot envelope around occupied camp cars.

On April 5, 1989, the FRA held a public hearing in Washington, DC. The comments made at this hearing and those received in response to the publication of the proposed rule are discussed in the Section-by-Section Analysis long with some minor changes in the proposed rule.

Background

At present, railroads own 3,637 on-track vehicles that are typically used to provide housing for workers who are building or maintaining tracks, signals, or bridges. These vehicles are known by several names, *e.g.*, camp cars, outfit cars, and bunk cars. For convenience, these vehicles are referred to as "camp cars." The units range from modular homes mounted on flat cars to converted passenger and freight cars. There are approximately 1,309 flat cars, 422 converted passenger cars, and 1,869 converted freight cars. Nearly all are used by six Class I railroads: Atchison, Topeka and Santa Fe, Burlington Northern, Conrail, CSX Transportation Systems, Norfolk and Western, and Union Pacific.

Under current industry practice, sizeable groups of workers are organized in so-called "production gangs" to improve the speed, quality, and efficiency with which large scale maintenance can be accomplished. Such a group will move progressively over that section of rail lines on which work is being done. This is typically seasonal work that must be accomplished while weather permits. Railroads need to house workers in reasonable proximity to the work site; in many areas of the country, no feasible alternatives exist.

Railroads assemble groups of workers and mechanized (on-rail) equipment and assign a certain number of cars outfitted as mobile living quarters. That collective unit will station itself at a given site and